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7 United States of America

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3349-LAB
12)
13 Plaintiff,) Date: January 28, 2008
14 v.) Time: 2:00 p.m.
15) The Honorable Larry A. Burns
16 EDUARDO ANSELMO)
17 TURCIOS-PORTILLO,) **UNITED STATES' MOTION FOR**
18 Defendant.) **RECIPROCAL DISCOVERY AND LEAVE**
19) **TO FILE FURTHER MOTIONS**
20)
21)
22)

23 The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P.
24 HEWITT, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby
25 files its Motions For Reciprocal Discovery and Leave to File Further Motions. These motions are based
26 on the files and records of this case, together with the attached statement of facts.

27 **I**

28 **STATEMENT OF THE CASE**

On December 12, 2007, the United States obtained an Indictment charging Eduardo Anselmo Turcios-Portillo ("Defendant") with one count of being a deported alien found in the United States, in violation of 8 U.S.C. § 1326 (a) and (b). On December 20, 2007, Defendant was arraigned on the Indictment and entered a plea of not guilty. The magistrate judge set a motion hearing and trial setting before the Honorable Larry A. Burns for January 28, 2008.

II**STATEMENT OF FACTS****A. OFFENSE CONDUCT**

On September 15, 2007, at approximately 11:45 p.m., Border Patrol Agents (“BPA”) were conducting linewatch operations near the intersection of Lyons Valley Road and Barrett lake Road in Jamul, California. This area is approximately ten miles north of the U.S./Mexico international border and nine miles west of the Tecate, California, Port of Entry. BPA responded to a seismic sensor activation in the area, observed five different sets of footprints, and followed the footprints and encountered five individuals attempting to conceal themselves in surrounding brush. BPA identified themselves and conducted field interviews of all five individuals, one of which, Defendant, freely identified himself as “Eduardo Anselmo Turcios-Portillo.” Defendant admitted that he illegally re-entered the United States without proper documentation or authorization. Defendant also freely and falsely stated to BPA that he was a citizen and national of Mexico, when in fact, Defendant is a citizen and national of Honduras.

A routine records check revealed that Defendant is a citizen and national of Honduras. Defendant had a hearing before an immigration judge on October 7, 1993. Defendant subsequently was lawfully excluded, deported, and removed from the United States to Honduras on two prior occasions and to Mexico on one prior occasion.

B. DEFENDANT’S CRIMINAL HISTORY

On August 10, 1999, Defendant was convicted of a crime of violence for Assault with a Firearm on a Person causing Great Bodily Injury, in violation of California Penal Code § 245(a)(2), in the Superior Court of California, County of San Bernardino. Defendant was sentenced to ten years in state prison. The United States has ordered the documents regarding this conviction and has produced the documents to defense counsel.

III**THE UNITED STATES’ MOTION FOR RECIPROCAL DISCOVERY**

The United States hereby requests Defendant deliver all material to which the United States may be entitled under Fed. R. Crim. P. 16(b) and 26.2.

1 **A. DEFENDANT’S DISCLOSURES UNDER FED R. CRIM. P. 16(b)**

2 The United States has voluntarily complied and will continue to comply with the requirements
3 under Fed. R. Crim. P. 16(a). Therefore, Fed. R. Crim. P. 16(b), requiring that reciprocal discovery be
4 provided to the United States, is applicable.

5 The United States hereby requests Defendant permit the United States to inspect, copy, and
6 photograph any and all books, papers, documents, photographs, tangible objects, or make copies of
7 portions thereof, which are within the possession, custody or control of Defendant and which Defendant
8 intends to introduce as evidence in his case-in-chief at trial.

9 The United States further requests that it be permitted to inspect and copy or photograph any
10 results or reports of physical or mental examinations and of scientific tests or experiments made in
11 connection with this case, which are in the possession or control of Defendant, which he intends to
12 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends
13 to call as a witness. Because the United States will comply with Defendant’s request for delivery of
14 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.
15 16(b)(1). The United States also requests that the Court make such order as it deems necessary under
16 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it
17 is entitled.

18 **B. WITNESS STATEMENTS UNDER FED. R. CRIM. P. 26.2**

19 Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a
20 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in
21 accordance with the Jencks Act.

22 The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after
23 the witness has testified. In order to expedite trial proceedings, the United States hereby requests
24 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before
25 trial to be set by the Court. Such an order should include any form in which these statements are
26 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

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IV

THE GOVERNMENT'S MOTION FOR LEAVE TO FILE FURTHER MOTIONS

Should new information or legal issues arise, the United States respectfully requests the opportunity to file such further motions as may be appropriate.

V

CONCLUSION

For the foregoing reasons, the United States requests the Court grant the United States' Motions for Reciprocal Discovery and Leave to File Further Motions.

DATED: January 8, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) Criminal Case No. 07CR3349-LAB
)
Plaintiff,)
)
v.) **CERTIFICATE OF SERVICE**
)
EDUARDO ANSELMO)
TURCIOS-PORTILLO,)
)
Defendant.)

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **THE UNITED STATES' MOTIONS FOR RECIPROCAL DISCOVERY AND LEAVE TO FILE FURTHER MOTIONS** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

William W. Brown, Esq.
Brown & Associates
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Lead Attorney for Defendant

A hard copy is being sent to chambers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 8, 2008

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney